

Date o f decision:April 30,1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of ..

thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr.D.D.Vyas, L.A. for the appellants

Mr. , L.A. for the respondents

Coram: N.J.Pandya & A.R.Dave,JJ.

April 30, 1996

ORAL JUDGMENT (Per N.J.Pandya,J.)

Admit. With the consent of the parties, the matter is taken up for final hearing.

2. Learned Advocate for the other side has very fairly conceded that on account of death of L.A. Mr.A.B.Patel, the parties in the trial Court were not informed and therefore, the matter had proceeded in absence of their knowing about the death of their Advocate. Under the circumstances, the judgment and decree passed by the trial Court cannot be sustained.

3. It is not a case where the parties were not represented and were not contesting the suit at all. The suit was contested on all possible grounds, legally and factually. Merely because of the demise of L.A. Mr.A.B.Patel, a senior practising Advocate of Bulsar District, when the aforesaid outcome is to be found, obviously, in our opinion, the appeal is required to be allowed and the matter is required to be remanded to the trial Court to be proceeded with from the stage where it was when the learned Advocate Mr.A.B.Patel died and thereafter, to be disposed of in accordance with law.

4. Before proceeding further, the parties that were represented by L.A. Mr.A.B.Patel should be notified about the sad demise of Mr.Patel and the notice should also contain further direction that in view of the death of Mr.Patel, the parties may make appropriate arrangement for being represented before the trial Court. Accordingly, the appeal is allowed. The Judgment and decree of the trial Court is set aside and the matter stands remanded to be disposed of in accordance with the observations made earlier.

5. Looking to the fact that the matter is very old, the trial Court is directed to expedite its disposal and to see that within 3 months of the service of notice to the concerned parties, as directed above, the suit is disposed of. No order on Civil Application. No order as to costs.
